the Society they have therefore no powers to interfere in the management of the Society. Then there is the allegation that the chairman of the meeting which elected the caretaker committee, Raja Nasron bin Raja Ishak, was not even a member of the Society at the material time.

It can be noticed however that despite the many allegations and counter-allegations in the affidavits there has not been one allegation that the Annual General Meeting convened on April 4, 1982, that is the 48th Annual General Meeting of the Society, was unconstitutional or otherwise invalid. Since the plaintiffs were elected in accordance with the procedure provided by the by-laws of the Society it cannot be disputed in my view at least at this stage, that *prima facie* they were validly elected to office. Until it be shown at the hearing that there were irregularities or other violations which render the election null and void, it must be presumed that the plaintiffs are for the moment holding office validly. A vote of no-confidence passed against them soon after the results of the election was announced did not make their election any less valid.

In the context of the facts now available before the court it is my opinion therefore that the omissions by the first plaintiff to mention certain matters in his affidavit are not fatal to his application for interlocutory injunction. The omissions did not amount to a suppression of material facts or omission intended to mislead the court nor was the court in fact misled.

For the above reasons the motion was dismissed and the interlocutory injunction ordered to continue until trial of the suit. Sr. Asst. Registrar to fix early date of hearing of the second application.

Order accordingly.

Solicitors: *Huang & Hew, Lovelace & Hastings.*

YAP SEE TECK v. PUBLIC PROSECUTOR

[A.C.J. (Mohamed Azmi J.) June 19, 1982]
[Kuala Lumpur – Federal Territory Criminal Appeal No. 125 of 1980]

Criminal Law & Procedure – Three persons jointly charged with offence – One of them pleading guilty – Procedure to be followed.

In this case three persons were jointly charged for two offences of gang robbery under section 395 of the Penal Code. At the commencement of the joint trial, one of the accused pleaded guilty to both charges and he was convicted and sentenced to three years' imprisonment on each charge to run concurrently. The other two accused were tried and at the trial the accused who had pleaded guilty and been sentenced was called to give evidence for the prosecution. The two accused were found guilty and sentenced to five years' imprisonment on each charge, the sentences to run concurrently. One of them, the appellant, appealed.

Held: (1) where a co-accused pleads guilty before the commencement of trial, it is desirable for the court to enquire whether the prosecution or the remaining co-accused wish to call him as a witness. If either the prosecution or the defence initimated that they wished to do so, it is desirable in the interest of justice that the court should not postpone sentence, but should proceed to dispose of the case, before removing him from the court. But if neither party requires him as a witness, sentence should be postponed until after the trial against the remaining accused has been completed;

(2) in this case as the accused, who had pleaded guilty, was required by the prosecution as a witness, the learned trial President did not err in law in taking the course he did when the first accused pleaded guilty;

(3) the fact that the learned President had recorded the brief facts of the prosecution case would not be prejudicial to the appellant, because as correctly stated by the learned President, even if the appellant and the other accued had been tried before another President, it would still be open to the prosecution to elicit from him the facts of the prosecution case including the fact that he had pleaded guilty to the charges. In the circumstances the refusal of the learned President to allow the application for appellant's case to be heard before another President was not wrong in law.

Cases referred to:

(1) *Toh Ah Loh and Mak Thim* v. *R.* [1949] M.L.J. 54.
(2) *Seet Ah Ann* v. *Public Prosecutor* [1950] M.L.J. 293.
(3) *Lee Weng Sang* v. *Public Prosecutor* [1976] 1 M.L.J. 82.

CRIMINAL APPEAL.

Karpal Singh (*Gnani Joseph* with him) for the appellant.

Gooi Soon Seng (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Mohamed Azmi J.: The appellant (the third accused) and two others (Low Yit San – the first accused – and Chow Soong – second accused) were charged for two offences under section 395 of the Penal Code. On the first charge, they were alleged to have jointly committed gang robbery with two others still at large by robbing Chow Khoo Kiwang, the proprietor of a Chinese herb shop at 109D, Jalan Sultan, on March 2, 1979 at about 4.30 p.m. On the second charge, they were also alleged with two others still at large to have jointly committed gang robbery by robbing Chong Yoon, a friend of Chow Khoo Kiwang at the same place, date and time. At the commencement of the joint trial, the first accused (Low Yit San) pleaded guilty to both the charges and he was convicted and sentenced to three years' imprisonment on each charge to run concurrently. The Appellant and second accused (Chow Soong) maintained their plea of not guilty, and at the close of case for the Defence, the learned trial President found them guilty; and on conviction, sentenced the second accused to five years' imprisonment on each charge. to run concurrently, and the Appellant to five years on each charge, also to run concurrently and to five strokes of whipping. I dismissed the appeal against conviction and sentence, and I now proceed to give my reasons.

In my view, the only ground of appeal which had some merit was the argument that the learned trial President had erred in law in proceeding to hear the case against the Appellant and the second accused after having accepted the plea of guilty of the first accused and after having heard the brief facts of the case and passed sentence on him. In those circumstances, it was the contention of the Appellant that the learned President ought to have deferred the facts and sentence against the first accused until after the conclusion of the trial against the Appellant and the second accused. From the records, Counsel for the Appellant did apply for his case to be heard before another President, but it was turned down. It should be stressed at the outset that the first accused who pleaded guilty eventually gave evidence for the Prosecution as P.W.8, and the reasons given by the learned President for turning down the Appellant's application could be found in the first two paragraphs of his judgment which are now reproduced:–

"At the outset of the trial, there were three accused persons. The 1st accused pleaded guilty and was sentenced accordingly by me. Counsel for 3rd accused then applied for the trial to be proceeded with before another President. I disallowed the application as the facts as given do not implicate 2nd and 3rd accused and the full ingredients of the two charges will have to be fully proved against them. Moreover, the three accused persons were first produced on March 12, 1979 and the case had been postponed once before on December 17, 1979 and fixed for hearing on June 5, 1980. To allow one more postponement, probably to the end of 1980, will cause the hearing of the case, involving an incident that happened on March 2, 1979 to be heard about 1 year 9 months after the incident.

Even if 2nd and 3rd accused are to be heard before another President, there is nothing to stop prosecution from introducing evidence of 1st accused having been convicted for the offences he is charged with and also call 1st accused as a Prosecution witness. Since I was of the view that the trial against 2nd and 3rd accused would in no way be prejudiced by my hearing their case, I commenced hearing of the case against them."

To determine the proper course that should be taken where one of the co-accused has pleaded guilty, it would be of assistance to refer to two cases. In *Toh Ah Loh & Mak Thim* v. *Rex*[1], the two appellants were convicted for being in unlawful possession of 48,952 rounds of ammunition under the Firearms and Ammunition (Unlawful Possession) Ordinance 1946. The first accused pleaded guilty and the trial Judge postponed sentence until after the hearing of the case against the second accused, but he was allowed to remain in Court the whole time and in the course of trial, the first accused was called by the second accused as a defence witness. It was held by the Court of Criminal Appeal that the first accused who pleaded guilty should have been removed not only from the dock but also from the Court. Although the Court held that allowing the first accused to remain in Court was not very material, it was undesirable. I can only infer that sort of practice is undesirable on the ground that it would affect the credibility of the first accused as a witness for the second accused, since he had been allowed to hear evidence given by other witnesses before giving his own testimony. In that case, the appeal by the first accused against sentence was dismissed, but the appeal by second accused against conviction was allowed on other grounds and a retrial was ordered. In *Seet Ah Ann* v. *Public Prosecutor*[2], it was held that the well-established practice in the Criminal Courts in England that a co-accused person is called as a witness only after he has been dealt with for his offence or after he has been acquitted of it should be followed in this country. With respect, I agree with Abbott J. on this point because, unless the co-accused had been sentenced by the Court, his testimony as a Prosecution or Defence witness would carry very little weight

since there is always the strong probability that in giving evidence, particularly for the Prosecution, he would hope for a light sentence or even for the charge against him to be totally withdrawn. It can reasonably be argued that by postponing sentence, the sword of Damocles would be held over his head in order to induce him to give favourable evidence for the Prosecution. Whereas, no such probability can exist once he has been dealt with by the court.

Having considered the two authorities, it is my view that where a co-accused pleads guilty before the commencement of trial, it is desirable for the court to enquire whether the Prosecution or the remaining co-accused wish to call him as their witness. If either the Prosecution or the Defence intimated that they wished to do so, I think it is desirable in the interest of justice that the court should not postpone sentence, but should proceed to dispose of the case, before removing him altogether from the court. But if neither party requires him as a witness, sentence should be postponed until after the trial against the remaining co-accused has been completed. This would avoid the "awkward situation" that might arise where two accused are charged for committing an offence jointly, as envisaged by Hashim Yeop A. Sani J. in *Lee Weng Sang* v. *Public Prosecutor*.[3] In the present appeal, there were three persons jointly charged and no "awkward situation" could arise as to whether the remaining two accused had committed the gang robberies jointly as a result of the first accused pleading guilty. Further, in *Lee Weng Sang case*, it would appear that the co-accused who pleaded guilty was not required as a witness and, as such, it was only proper that sentence against him ought to be postponed. But in the present appeal, the first accused who pleaded guilty was required by the Prosecution and did in fact appear as a Prosecution witness. In that event, I hold that it is not wrong in law for the learned President to dispose of his case immediately. The fact that the learned President had recorded the brief facts of the Prosecution case would not, in my view, be prejudicial to the Appellant, because as correctly stated by the learned President that even if the Appellant and the second accused were to be tried before another President, it would still be open to the Prosecution to elicit from him the facts of the Prosecution case including the fact that he has pleaded guilty to the charge. Apart from other inconvenience that might arise, I can see no useful purpose in having their case heard before another President. In the circumstances, I hold that the learned trial President did not err in law in taking the course he did when the first accused pleaded guilty. His refusal to allow the application for Appellant's case to be heard before another President is also not wrong in law.

For the above reasons, the appeal was dismissed.

Appeal dismissed.

Solicitors: *Lawrence & Joseph*

PROFESSOR DR. A.KAHAR BADOR & ORS. v. N. KRISHNAN & ORS. (NO. 2)

[O.C.J. (Hashim Yeop A. Sani J.) July 2, 1982]

[Kuala Lumpur – Civil Suit No. A 9 of 1982]

Practice and Procedure – Application to set aside writ – Disputes among members of co-operative society – Disputes should be referred to Registrar-General of Co-operative Societies – Co-operative Societies Ordinance, 1948, s. 49.

Co-operative Societies – Dispute between members – Reference to Registrar of Co-operative Societies – Co-operative Societies Ordinance, 1948, s. 49.

In this case the appellants had been elected members of the Committee of Management of a co-operative society at the Annual General Meeting of the Society. After the election results were announced a vote of no-confidence against the Committee of Management for the year 1982/1983 was passed. A temporary caretaker Committee of Management was elected from the floor pending the outcome of an enquiry to be held by the Registrar-General of Co-operative Societies. There had been charges of mismanagement and irregularities allegedly committed by members of the Committee of Management. The appellants applied for (1) a declaration that they are lawfully elected members of the Committee of Management of the Co-operative Society for the year 1982; (2) a declaration that the election of the defendants as members of the Committtee of Management of the said Society for the year 1982 was contrary to the By-laws of the society and void. The defendants applied to set aside the writ *inter alia* on the ground that the disputes between the members should be referred to the Registrar-General of Co-operative Societies for decision.

Held, the disputes were disputes which should be properly referred to the Registrar-General of Co-operative Societies and the writ should therefore be set aside.

Cases referred to:

(1) *Heard* v. *Pickthorne* [1913] 3 K.B. 299.

(2) *Subramaniam* v. *Tan Lee Leng & Ors.* [1980] 1 M.L.J. 171.